

## **Part 5**

### **Orders and Enforcement**

#### **63G-4-501 Civil enforcement.**

- (1)
  - (a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts.
  - (b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.
  - (c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure.
  - (d) The action may request, and the court may grant, any of the following:
    - (i) declaratory relief;
    - (ii) temporary or permanent injunctive relief;
    - (iii) any other civil remedy provided by law; or
    - (iv) any combination of the foregoing.
- (2)
  - (a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced:
    - (i) until at least 30 days after the plaintiff has given notice of the plaintiff's intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;
    - (ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or
    - (iii) if a petition for judicial review of the same order has been filed and is pending in court.
  - (b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement.
  - (c) Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of an agency's order may not request, and the court may not grant, any monetary payment apart from taxable costs.
- (3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:
  - (a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order;
  - (b) the order does not apply to the defendant;
  - (c) the defendant has not violated the order; or
  - (d) the defendant violated the order but has subsequently complied.
- (4) Decisions on complaints seeking civil enforcement of an agency's order are reviewable in the same manner as other civil cases.

Renumbered and Amended by Chapter 382, 2008 General Session

#### **63G-4-502 Emergency adjudicative proceedings.**

- (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:
  - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
  - (b) the threat requires immediate action by the agency.
- (2) In issuing its emergency order, the agency shall:
  - (a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
  - (b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
  - (c) give immediate notice to the persons who are required to comply with the order.
- (3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-4-503 Declaratory orders.**

- (1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.
- (2) Each agency shall issue rules that:
  - (a) provide for the form, contents, and filing of petitions for declaratory orders;
  - (b) provide for the disposition of the petitions;
  - (c) define the classes of circumstances in which the agency will not issue a declaratory order;
  - (d) are consistent with the public interest and with the general policy of this chapter; and
  - (e) facilitate and encourage agency issuance of reliable advice.
- (3)
  - (a) An agency may not issue a declaratory order if:
    - (i) the request is one of a class of circumstances that the agency has by rule defined as being exempt from declaratory orders; or
    - (ii) the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.
  - (b) An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.
- (4) Persons may intervene in declaratory proceedings if:
  - (a) they meet the requirements of Section 63G-4-207; and
  - (b) they file timely petitions for intervention according to agency rules.
- (5) An agency may provide, by rule or order, that other provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.
- (6)
  - (a) After receipt of a petition for a declaratory order, the agency may issue a written order:
    - (i) declaring the applicability of the statute, rule, or order in question to the specified circumstances;
    - (ii) setting the matter for adjudicative proceedings;
    - (iii) agreeing to issue a declaratory order within a specified time; or

- (iv) declining to issue a declaratory order and stating the reasons for its action.
- (b) A declaratory order shall contain:
  - (i) the names of all parties to the proceeding on which it is based;
  - (ii) the particular facts on which it is based; and
  - (iii) the reasons for its conclusion.
- (c) A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.
- (d) A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.
- (7) Unless the petitioner and the agency agree in writing to an extension, if an agency has not issued a declaratory order within 60 days after receipt of the petition for a declaratory order, the petition is denied.

Renumbered and Amended by Chapter 382, 2008 General Session